IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1062 of 2001

in

SPECIAL CIVIL APPLICATIONNo 7774 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NOOTANN SARVA VIDYALAY KELVANIMANDAL

Versus

JYOTI TRUST

Appearance:

1. LETTERS PATENT APPEAL No. 1062 of 2001

MR JAL UNWALA for MR PK JANI for the Appellant

MR AJ PATEL for MR JAYESH M PATEL for Respondent No. 1

MR PREMAL JOSHI, AGP, for Respondents No. 2-3

CORAM : MR.JUSTICE A.R.DAVE
and

MR.JUSTICE D.P.BUCH

Date of decision: 15/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

An order dated 14th September 2001 passed in Special Civil Application NO. 7774 of 2001 has been challenged in this appeal. By virtue of the impugned order passed by the learned single Judge, respondent No. 3-the Collector, Dist. Mehsana, has been, in effect, directed to demolish illegal construction put up by the appellant on the land in question and remove the encroachment made by the appellant on the land belonging to the government.

2. Some undisputed facts giving rise to the present litigation are as under :

3. The appellant is a trust, which is running certain educational institutions. The appellant had made a request to the government authorities for grant of land forming part of City Survey No. 6 situated at Visnagar. After considering the request made by the appellant, a plot of land admeasuring 226.76 sq.mtrs. forming part of City Survey No. 6 was granted to the appellant by an order dated 21.6.1992. A copy of the order whereby the land in question was granted is annexed as Annexure A to Special Civil Application No. 7774 of 2001. The grant of land was conditional. One of the important conditions, which has been incorporated in the said order, is that the appellant would not put up any construction on the land granted to it and it has been also provided in the order that if any construction is put up on the land in question, the concerned authorities would forfeit the land without payment of any compensation and would also impose fine upon the appellant. In violation of the said condition, the appellant put up construction on the land in question. Moreover, the appellant also made encroachment on some other portion of the land belonging to the government and forming part of City Survey No. 6 situated at Visnagar. When the fact with regard to illegal construction on the land in question and the encroachment made on the government land was brought to the notice of respondent No. 3, proceedings had been initiated for the purpose of removal of the encroachment and the illegal construction. A notice dated 13.1.2000 was given to the appellant calling upon it to show cause as to why the government authorities should not take action for demolition of the

illegal construction and removal of the encroachment but instead of giving reply to the said notice, the appellant had challenged the validity of the notice before this court by filing Special Civil Application No. 571 of 2000. As this Court was not inclined to pass any order in favour of the appellant, the said petition was withdrawn by the appellant on 19.2.2001.

4. Upon withdrawal of Special Civil Application No. 571 of 2000, respondent No. 3 ought to have taken action in accordance with law for the purpose of removal of the encroachment as well as for demolition of the unauthorized construction put up on the land in question. As respondent No. 3 did not take any action in pursuance of the show-cause notice, Jyoti Trust, respondent No.1 herein, had requested respondent No. 3 to see that the illegal construction is removed as soon as possible because the said illegal construction was also a sort of hindrance in the passage to a hospital being run by respondent no. 1 - Jyoti Trust. In spite of drawing attention of respondent No. 3 for doing the needful for removal of the illegal construction, as respondent No. 3 did not take any action, respondent No. 1 was constrained to file Special Civil Application. No. 7774 of 2001 wherein it was prayed that the Collector should be directed to demolish the illegal construction put up by the appellant and clear the public road leading to the hospital run by respondent No. 1. In the said petition the appellant was also joined as respondent No. 1. Looking to the facts of the case, the learned single Judge, without issuing any notice to the appellant, directed respondent No. 3 to take appropriate action within a time bound programme by an order dated 14.9.2001.

5. The appellant has been aggrieved by the order passed by the learned single Judge because in pursuance of the said order, respondent No. 3 shall have to demolish the illegal construction put up by the appellant and the encroachment made by the appellant shall also be removed by respondent No. 3.

6. We have heard the learned advocate for the appellant, learned advocate Shri A.J. Patel for respondent No. 1 and Shri Premal Joshi, learned AGP for respondents Nos. 2 and 3.

7. The learned advocate appearing for the appellant has submitted that the learned single Judge ought not to have passed any order without hearing the appellant because, by virtue of the order passed by the learned

single Judge, the appellant was likely to be adversely affected because the illegal construction put up by the appellant was to be demolished in pursuance of the direction given by the learned single Judge. It has been submitted by him that had the appellant been heard by the learned single Judge, the appellant could have convinced the learned single Judge that the show-cause notice issued by respondent No. 3 was not proper and even without demolition of the illegal construction, respondent No. 1 could have used the public road leading to the hospital run by it. It has been also submitted by him that the appellant had submitted an application to the State of Gujarat-respondent No. 2, for regularisation of the unauthorised construction put up on the land in question and as the application had not been finally decided, respondent No. 3 could not have been directed to act in pursuance of the show-cause notice and to demolish the illegal construction put up by the appellant.

8. On the other hand, learned AGP Shri Joshi has submitted that the appellant was granted the land in question on certain conditions. He has drawn our attention to condition No. 4 incorporated in order dated 21.6.1992 whereby the appellant has been restrained from putting up any construction on the land in question. It is not in dispute that the appellant committed breach of condition No. 4 by putting up construction on the land in question. It is also not in dispute that the appellant has made encroachment on some portion of land forming part of City Survey No. 6 situated at Visnagar, which is abutting the land which was granted to the appellant. It has been submitted by the learned AGP that on account of the illegal construction put up by the appellant, some hardship was caused to respondent No. 1 and therefore respondent No. 1 had made a representation to the effect that the illegal construction put up by the appellant should be demolished.

9. It has been further submitted by the learned AGP that in pursuance of the show-cause notice dated 13.1.2000, the appellant did not give any reply and, therefore, impliedly the appellant had admitted the allegations or facts stated in the said show-cause notice. It has been further submitted that the validity of the said show-cause notice was challenged by filing Special Civil Application No. 571 of 2000 but as no favourable order was likely to be passed by this court, it was withdrawn by the appellant. It is thus very clear that the appellant has no right to continue to remain in occupation of the government land and have the illegal

construction on the land granted to it in violation of the conditions on which the land was granted. It has been therefore submitted by him that the learned single Judge has not committed any error while giving direction to respondent No. 3 to act in pursuance of the notice dated 13.1.2000. He has further submitted that an application given by the appellant for the purpose of regularisation of illegal construction put up on the land in question has been turned down by the government under order dated 4.1.2001. It has been submitted that intimation of the said fact had also been given to the appellant under letter dated 2.2.2001 by respondent No. 3. A copy of the letter addressed to the appellant by respondent No. 3 has been placed on record. It has been further submitted by the learned AGP that the decision taken by both the authorities has already become final and it would not be proper to restrain respondent No. 3 from acting in accordance with law.

10. Learned advocate Shri A.J. Patel appearing for respondent No. 1-Trust has submitted that respondent No. 1-Trust is running a hospital including a maternity home. The illegal construction which has been put up by the appellant on the land granted to the appellant is likely to hinder the vehicles going to the hospital. It has been also submitted by him that the land in question was granted to the appellant with a clear condition that no construction should be put upon it. As the appellant has committed breach of the condition, respondent No. 3 was bound to take action against the appellant but as action was not being taken by respondent No. 3-Collector, respondent No. 1 was constrained to file Special Civil Application No. 7774 of 2001 praying that the Collector should be directed to perform his duties and this Court has rightly directed respondent No. 3 Collector to perform his duties in accordance with law and, therefore, the order passed by the learned single Judge is just and proper.

11. We have heard the learned advocates at length. Upon perusal of the record and after hearing the learned advocates, we have found that it is not in dispute that the appellant has put up construction on the land in question in violation of the conditions on which the land was granted to it. The appellant, who is running educational institutions, should not have behaved in such an irresponsible and illegal manner. As submitted by the learned advocate for the appellant, the trust has spent more than Rs. 1,00,000/- for putting up the illegal construction and we believe that the trust must have spent money for protecting the illegal construction by

paying professional fees to lawyers. It would not be proper on the part of a public trust to squander trust money in such a way. We believe that settlors of the trust must not have ever imagined that the amount given by them in trust would be frittered away by the trustees in such a way. Very often, for advancing a good cause of education, people show benevolence and contribute substantial amount to such trusts. In our opinion, it is most immoral and unethical on the part of the trustees to waste trust fund in such an improper manner.

12. Looking to the attitude and behaviour of the appellant-Trust, while issuing the notice to the respondents, we wanted to know whether the trustees who were responsible for putting up construction in an illegal manner were prepared to compensate the Trust for the loss which the Trust had caused in the matter of putting up the construction and the expenditure incurred for defending the illegal action. In pursuance of the said query, the Chairman of the appellant-Trust Shri Bholabhai Chaturbhai Patel has agreed to compensate the trust and has given an undertaking to this Court that the cost of putting up construction on the land in question as well as the legal costs incurred by the Trust for defending the illegal construction and encraochment made on the government land would be borne by him personally. The said trustee is, therefore, directed to compensate the Trust by paying the amount of expenditure incurred by the Trust for the above-referred purpose. The said trustee shall reimburse the entire amount spent by the Trust within a period of six weeks from today. A copy of this order shall be sent to the Charity Commissioner, Gujarat State, so as to see that the direction given to the said trustee with regard to the reimbursement is duly complied with.

13. So far as the merits of the appeal is concerned, in our opinion, the learned single Judge did not commit any mistake while giving the direction to respondent No. 3 for taking action in accordance with law as the appellant had committed breach of a condition on which the land in question was granted to the appellant. The submission of the learned advocate appearing for the appellant that the appellant ought to have been heard does not appear to be well-founded for the reason that the learned single Judge had only directed respondent No. 3 to perform his duty. Respondent No. 3 had already issued notice to the appellant and the appellant was aware of the fact that it had put up illegal construction on the land granted to it by the Government and had also made an encroachment on the government land. Respondent

No. 3 was not implementing the decision taken by the government authorities and therefore the learned single Judge had simply directed respondent No. 3 to act in accordance with law and to implement its decision with regard to demolition of the illegal construction put up by the appellant. It is also not in dispute that a show-cause notice dated 13.1.2000 had been given to the appellant calling upon it to show cause as to why the illegal construction should not be demolished and the encroachment made by the appellant be not removed. Instead of giving reply to the said show-cause notice, the appellant challenged the same by filing Special Civil Application No. 571 of 2000. It appears that when this court was not inclined to set aside the show-cause notice and was not inclined to grant any order in favour of the appellant, the Special Civil Application was withdrawn unconditionally. It is pertinent to note that as admitted by the learned advocate for the appellant, even after withdrawal of the Special Civil Application, no reply was given to the show-cause notice and, therefore, one can safely presume that the appellant trust had admitted the facts stated in the show-cause notice and therefore the government authorities were bound to act in accordance with law for removal of the encroachment and demolition of the illegal construction. In view of the said fact, we do not find any illegality committed by the learned single Judge while giving a direction to respondent No. 3 for taking the action proposed by him in a time bound schedule. Final outcome of the Special Civil Application would not have been different even if the appellant had been given hearing by the learned single Judge because the appellant could not have established that he had not put up illegal construction on the land inquestion or had not made encroachment on the land of the government because the said facts have already been admitted by the appellant. It appears that the learned single Judge was constrained to give such a direction because he found that respondent No. 3 was not acting in accordance with law or for some reason he was slow in taking action against the appellant.

14. Submissions of the learned advocate for the appellant with regard to a representation made for regularisation of the illegal construction and encroachment are also without any substance. It appears that in the past a request was made by the appellant to the government authorities for regularisation of the encroachment and the illegal construction. The government authorities have already decided that the illegal actions of the appellant should not be regularised. The learned AGP has placed on record two

letters/communications in pursuance of the said representation. Letter/order dated 4.1.2001 addressed to respondent No. 3 by respondent No. 2 denotes that respondent No. 2 government had decided not to regularise the construction and by letter dated 2.2.2001 written to the appellant, respondent No. 3 had conveyed the said decision of respondent No. 2 to the appellant. Upon perusal of the above-referred two communications, it is abundantly clear that respondent No. 3 as well as the State of Gujarat have finally decided that the illegal construction put up by the appellant on the land in question should not be regularised and the encroachment made by the appellant on the government land should also not be regularised.

15. The learned advocate appearing for the appellant has lastly submitted that during the pendency of this appeal, on 29.9.2001, another representation has been made to the State of Gujarat in Revenue Department with a prayer that the illegal construction put up by the appellant be regularised. The appellant is awaiting the final outcome of the said representation. Though the respondent Government has already decided not to regularise the encroachment, in our opinion, respondent No. 2 government is not likely to change its decision, however, we continue the ad-interim relief which has already been granted earlier for a period of one week from today so that if any decision in favour of the appellant is taken by the government, the illegal construction may not be demolished by respondent No. 3. Thus, we direct that the ad-interim relief which was granted by this Curt on 1.10.2001 shall operate till 22.10.2001. The ad-interim relief shall stand automatically vacated on 23.10.2001.

16. In the circumstances, we do not find any substance in the appeal and, therefore, the appeal is dismissed with no order as to costs. Notice is discharged.

As directed hereinabove, a copy of this order be sent to the Charity Commissioner, Gujarat State.

(A.R. Dave, J.)

(D.P. Buch, J.)

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